

## **REMARKS**

### **FORMAL MATTERS:**

Claims 47-52 are pending after entry of the amendments set forth herein.

Claims 1-46 were canceled without prejudice.

Claim 47 is amended.

No new matter is added.

### **REJECTIONS UNDER §112, ¶2**

Although applicant does not agree with the Examiner's position with respect to the interpretation of claim 47, Applicant wishes to expedite prosecution. Accordingly, claim 47 has been amended using language suggested by the Examiner within the Office Action and interview of May 25, 2010. Accordingly, the rejection is believed to have been rendered moot.

### **BAILLIE REJECTIONS**

Within the Examiner's Interview Summary dated June 7, 2010 the Examiner indicated that rejections based on the Baillie et al. letter were being withdrawn. The Examiner understood that Baillie actually teaches that the administration of an antidepressant orally increases sputum viscosity and as such teaches away from applicant's invention.

### **NI ET AL. REJECTIONS**

Applicant does not acquiesce to the rejections based on Ni et al., but wishes to expedite prosecution. Further, during the interview with the Examiner on May 25, 2010 the Examiner agreed that if the claims 40-46 were canceled and claim 47 was amended to indicate that the formulation consisted essentially of a carrier and an antidepressant selected from the group consisting of tricyclic antidepressants and tetracyclic antidepressants the rejections would be withdrawn and the application would be allowed. The claims have been amended in this manner.

The Ni et al. reference requires the inclusion of a specific compound defined by structural formula I in Ni et al. be included in the formulation. The compound of structural formula I would be a compound which would substantially effect the pharmaceutical activity of the formulation. Thus, by including the "consisting essentially of" language into claim 47 the amended claim 47 excludes any

formulation taught within Ni et al. This point was agreed to during the interview of May 25, 2010. Thus, an indication of the withdrawal of the rejections is respectfully requested.

Applicant wishes to make of record the following case law: *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1368-69 (Fed. Cir. 2008). In this case the Federal Circuit clearly held that a reference which disclosed the claimed elements listed in two separate Examples did not anticipate or render obvious an invention in the absence of how teaching how one skilled in the art might combine the separately listed components to achieve the claimed invention. However, here it is pointed out that this issue has been rendered moot by the cancellation of claims 40-46.

### CONCLUSION

All of the claims 1-46 have been canceled. Claim 47 has been amended to claim the method carried out by administering a formulation "consisting essentially of the carrier and the specific classes of antidepressants." Because the Ni et al. reference requires the inclusion of other compounds amended claim 47 language excludes the possibility of any formulation of Ni et al. Thus, as agreed in the Interview of May 26, 2010 the rejection should be withdrawn and the application allowed.

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number AERX-134.

Respectfully submitted,  
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Date: 18 June 2010

By: \_\_\_\_\_

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